

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 1018

Short Title: GSC Bar Ass'n Proposals/Landmark Designation. (Public)

Sponsors: Representative Davis.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 1, if favorable, Rules, Calendar, and Operations of the House

May 24, 2022

A BILL TO BE ENTITLED

AN ACT TO (I) MAKE VARIOUS AMENDMENTS AFFECTING REAL PROPERTY, (II) STRENGTHEN THE PERSONAL LIABILITY PROTECTION FOR LIMITED LIABILITY PARTNERSHIPS, (III) ALIGN THE AUTHORITY TO TRANSFER VENUE FOR JUDICIAL REVIEW OF CONTESTED CASES WITH OTHER CASES, (IV) MAKE A CONFORMING CHANGE TO ACCOUNT FOR SPECIAL FIDUCIARIES IN GUARDIANSHIP PROCEEDINGS, AND (V) CLARIFY AND IMPROVE THE LANDMARK DESIGNATION PROCEDURE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. REAL PROPERTY AMENDMENTS

SECTION 1. G.S. 41-22 reads as rewritten:

"§ 41-22. ~~Supersession.~~ Rule against perpetuities abolished.

~~This Article supersedes the The rule of the common law known as the rule against perpetuities. perpetuities is abolished.~~"

SECTION 2. G.S. 47-18.1 reads as rewritten:

"§ 47-18.1. ~~Registration of certificate of corporate~~ entity name change, merger, consolidation, or conversion.

(a) If title to real property in this State is vested by operation of law in another entity upon the name change, merger, consolidation, or conversion of an entity, ~~such~~ the vesting is effective against lien creditors or purchasers for a valuable consideration from the entity formerly owning the property, only from the time of registration of a certificate ~~thereof~~ as provided in this section, in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.

(b) The Secretary of State shall adopt uniform certificates of name change, merger, consolidation, or conversion, to be furnished for registration, and shall adopt ~~such~~ fees as ~~are~~ necessary for the expense of ~~such certification.~~ these certifications. If the entity involved is not a domestic entity, a similar certificate by any competent authority in the jurisdiction of incorporation or organization may be registered in accordance with this section.

(c) A certificate of the Secretary of State prepared in accordance with this section shall be registered by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer ~~shall be~~ are required. The name of the entity formerly owning the property shall appear in the "Grantor" index, and the



1 name of the entity owning the property by virtue of the merger, consolidation, or conversion shall
2 appear in the "Grantee" index."

3 SECTION 3.(a) G.S. 47-119 reads as rewritten:

4 "**§ 47-119. ~~Form of memorandum~~ Memorandum for option to purchase or convey, right of**
5 **first refusal, or right of first offer for real estate.**

6 An option to purchase or convey, a right of first refusal, or a right of first offer for real estate
7 may be registered by registering a memorandum thereof which shall set forth:that sets forth all
8 of the following:

- 9 (1) The names ~~of the parties thereto;~~and signatures, executed and notarized, of all
10 of the following:
11 a. Each record title holder selling the option or right.
12 b. Each person purchasing the option or right.
- 13 (2) A description of the ~~property which~~real estate that is subject to the
14 ~~option;~~option or right.
- 15 (3) The expiration date of the ~~option;~~option or right.
- 16 (4) ~~Reference~~The title of the agreement and the parties to it, as contained in the
17 original written contract, or other reference sufficient to identify the complete
18 agreement between the parties.

19 Such a memorandum may be in substantially the following form:

20 NORTH CAROLINA

21 _____ COUNTY

22 In _____ consideration _____ of _____, _____ the
23 receipt

24 _____ (Set out consideration)
25 of _____ which _____ is _____ hereby _____ acknowledged,
26 _____

27 _____ (Name and address of person selling option)
28 does _____ hereby _____ give _____ and _____ grant _____ to
29 _____

30 _____ (Name and address of person buying option)
31 the right and option to purchase the following property:

32 (Here describe property)

33 This option shall expire on the _____ day of _____,
34 The provisions set forth in a written option agreement between the parties dated the _____
35 day of _____, _____, are hereby incorporated in this memorandum.

36 Witness our hand(s) and seal(s) this _____ day of _____,
37 _____ (Seal)
38 _____ (Seal)"

39 SECTION 3.(b) G.S. 47-119.1 reads as rewritten:

40 "**§ 47-119.1. ~~Form of memorandum~~ Memorandum for contract to purchase real estate.**

41 A contract to convey real estate may be registered by registering a memorandum thereof
42 ~~which shall set that sets forth~~ all of the following:

- 43 (1) The names ~~of the parties thereto;~~and signatures, executed and notarized, of all
44 of the following:
45 a. Each record title holder contracting to convey an interest in the real
46 estate.
47 b. Each person contracting to purchase the real estate.
- 48 (2) A description of the ~~property which~~real estate that is subject to the contract.
- 49 (3) The expiration date of the contract.

(4) ~~Reference~~ The title of the agreement and the parties to it, as contained in the original written contract, or other reference sufficient to identify the complete agreement between the parties.

The memorandum may be in substantially the following form:

NORTH CAROLINA

_____ COUNTY

(Name and address of person contracting to sell real estate)
and

(Name and address of person contracting to purchase real estate)

have entered into a contract to sell and purchase the following property:

(Here describe property)

This contract provides for a closing date of the _____ day of _____, _____.

The provisions set forth in a written contract to convey real estate between the parties dated the _____ day of _____, _____, are hereby incorporated in this memorandum.

Witness our hand(s) and seal(s) this _____ day of _____, _____

(Seal)

(Seal)

~~[Acknowledgement notarial certificate by all parties, as provided by applicable law in order to register in the office of the register of deeds of the county in which the property is located.]~~

The titles of the contract and the parties thereto, as contained in the original written contract, may be substituted in lieu of the above references."

SECTION 3.(c) G.S. 47-120 reads as rewritten:

"§ 47-120. Memorandum as notice.

~~Such~~ A memorandum of a lease, an option to purchase real estate, or convey, a right of first refusal, a right of first offer, or a contract to convey real estate as proposed by G.S. 47-118, 47-119, or 47-119.1 when executed, acknowledged, executed by each record title holder and each other party to the instrument, acknowledged before a notary public, and delivered and registered as required by law, shall be is as good and sufficient notice, and have has the same force and effect as if the written lease, option to purchase real estate, or contract to convey instrument had been registered in its entirety. However, it shall be is conclusively presumed that the conditions of any contract to purchase that is the subject of a recorded memorandum under this section have instrument reflected in a memorandum have either been complied with or have expired and are no longer enforceable as against creditors or purchasers for valuable consideration who that have recorded their interests after the memorandum from and after the expiration of 60 days from whichever of the following events occurs first: 60 days after the earlier of the following:

(1) ~~The closing expiration~~ date stated in the memorandum, or any recorded extension or renewal of the memorandum, signed by the parties and acknowledged before an officer authorized to take acknowledgements a notary public.

(2) ~~The date when the memorandum required the conditions of the contract to convey, to have been performed, including payment of the last installment of earnest money or balance of purchase price (other price, other than a purchase money note or deed of trust), trust, and delivery of the deed from the seller to buyer were required by the terms of the recorded memorandum to have been performed, buyer,~~ or the date of any recorded extension or renewal thereof

1 signed by the parties and acknowledged before ~~an officer authorized to take~~
2 ~~acknowledgements~~ a notary public."

3 4 **PART II. LIMITED LIABILITY PARTNERSHIPS**

5 **SECTION 4.(a)** G.S. 59-45 reads as rewritten:

6 "**§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited**
7 **liability partnerships.**

8 (a) Except as provided by subsections (a1) and (b) of this section, all partners are jointly
9 and severally liable for the acts and obligations of the partnership.

10 (a1) Except as provided in subsection (b) of this section, a partner in a registered limited
11 liability partnership is not individually ~~liable~~ liable, directly or indirectly, including by
12 indemnification, contribution, assessment, or otherwise, for debts and obligations of the
13 partnership incurred while it is a registered limited liability partnership solely by reason of being
14 a partner and does not become liable by participating, in whatever capacity, in the management
15 or control of the business of the partnership.

16 (b) Nothing in this Chapter ~~shall be interpreted to abolish, modify, restrict, limit, or alter~~
17 ~~alters~~ the law in this State applicable to the professional relationship and liabilities between the
18 individual furnishing the professional services and the person receiving the professional services,
19 the standards of professional conduct applicable to the rendering of the services, or any
20 responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner
21 in a registered limited liability partnership is not individually liable, directly or indirectly,
22 including by indemnification, contribution, assessment, or otherwise, for the debts, obligations,
23 and liabilities of, or chargeable to, the registered limited liability partnership that arise from
24 errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another
25 partner or by an employee, agent, or other representative of the partnership; ~~provided,~~ however,
26 nothing in this Chapter ~~shall affect~~ affects the liability of a partner of a professional registered
27 limited liability partnership for his or her own errors, omissions, negligence, malpractice,
28 incompetence, or malfeasance committed in the rendering of professional services.

29 ...

30 (e) The liability of partners of a registered limited liability partnership formed and
31 existing under this Chapter ~~shall at all times be~~ is determined ~~solely and exclusively~~ by this
32 Chapter and the laws of this State.

33 (f) If a conflict arises between the laws of this State and the laws of any other jurisdiction
34 with regard to the liability of a partner of a registered limited liability partnership formed and
35 existing under this Chapter for the debts, obligations, and liabilities of the registered limited
36 liability partnership, this Chapter and the laws of this State ~~shall govern~~ in determining the
37 liability."

38 **SECTION 4.(b)** G.S. 59-70 reads as rewritten:

39 "**§ 59-70. Rules for distribution.**

40 In settling accounts between the partners after dissolution, the following rules shall be
41 observed, subject to any agreement to the contrary:

42 (1) The assets of the partnership are all of the following:

43 a. The partnership ~~property~~ property.

44 b. The contributions of the partners necessary for the payment of all the
45 liabilities specified in subdivision (2) of this section.

46 (2) The liabilities of the partnership ~~shall rank~~ in order of payment, as follows:

47 a. Those owing to creditors other than ~~partners~~ partners.

48 b. Those owing to partners other than for capital and ~~profits~~ profits.

49 c. Those owing to partners in respect of ~~capital~~ capital.

50 d. Those owing to partners in respect of profits.

- 1 (3) The assets shall be applied in the order of their declaration in subdivision (1)
2 of this section to the satisfaction of the liabilities.
- 3 (4) The partners shall contribute, as provided by ~~G.S. 59-48, subdivision (1)~~
4 G.S. 59-48(1), the amount necessary to satisfy the liabilities; any liabilities
5 incurred when the partnership was not a registered limited liability
6 partnership; but if any, but not all, of the partners are insolvent, or, not being
7 subject to process, refuse to contribute, the other partners shall contribute their
8 share of the these liabilities, and, in the relative proportions in which they
9 share the profits, the additional amount necessary to pay the these liabilities.
- 10 (5) An assignee for the benefit of creditors or any person appointed by the court
11 ~~shall have~~ has the right to enforce the contributions specified in subdivision
12 (4) of this section.
- 13 (6) ~~Any A partner or his legal representative shall have~~ has the right to enforce
14 the contributions specified in subdivision (4) of this ~~section,~~ section to the
15 extent of the amount ~~which he~~ that the partner has paid in excess of ~~his the~~
16 partner's share of the liability.
- 17 (7) The individual property of a deceased partner ~~shall be liable for~~ is subject to
18 the contributions specified in subdivision (4) of this section.
- 19 (8) When partnership property and the individual properties of the partners are in
20 possession of a court for distribution, partnership creditors ~~shall have~~ have priority
21 on partnership property and separate creditors have priority on individual
22 property, saving the rights of lien or secured ~~creditors as heretofore.~~ creditors.
- 23 (9) Where a partner has become bankrupt or ~~his the partner's~~ estate is insolvent
24 insolvent, the claims against the separate property ~~shall rank~~ rank in the following
25 order:
- 26 a. Those owing to separate ~~creditors,~~ creditors.
- 27 b. Those owing to partnership ~~creditors,~~ creditors.
- 28 c. Those owing to partners by way of contribution."

30 PART III. VENUE FOR JUDICIAL REVIEW OF CONTESTED CASES

31 SECTION 5. G.S. 150B-45 reads as rewritten:

32 "§ 150B-45. Procedure for seeking review; waiver.

33 (a) ~~Procedure.—Deadline. —~~ To obtain judicial review of a final decision under this
34 Article, the person seeking review must file a petition in superior court within 30 days after the
35 person is served with a written copy of the decision. ~~The petition must be filed as follows: A~~
36 person that fails to file a petition within the required time waives the right to judicial review
37 under this Article. For good cause shown, however, the superior court may accept an untimely
38 petition.

- 39 (1) ~~Contested tax cases.—A petition for review of a final decision in a contested~~
40 ~~tax case arising under G.S. 105-241.15 must be filed in the Superior Court of~~
41 ~~Wake County.~~
- 42 (2) ~~Other final decisions.—A petition for review of any other final decision under~~
43 ~~this Article must be filed in the superior court of the county where the person~~
44 ~~aggrieved by the administrative decision resides, or in the case of a person~~
45 ~~residing outside the State, in the county where the contested case which~~
46 ~~resulted in the final decision was filed.~~

47 (b) ~~Waiver.—A person who fails to file a petition within the required time waives the~~
48 ~~right to judicial review under this Article. For good cause shown, however, the superior court~~
49 ~~may accept an untimely petition.~~ Venue. — The petition must be filed as follows:

- 1 (1) Contested tax cases. – A petition for review of a final decision in a contested
 2 tax case arising under G.S. 105-241.15 must be filed in the Superior Court of
 3 Wake County.
- 4 (2) Other final decisions. – A petition for review of any other final decision under
 5 this Article must be filed in the superior court of the county where the person
 6 aggrieved by the administrative decision resides, or in the case of a person
 7 residing outside the State, in the county where the contested case that resulted
 8 in the final decision was filed.
- 9 (3) If a petition is filed in an improper county, the superior court of that county
 10 may order a change of venue consistent with G.S. 1-83 but shall not dismiss
 11 the petition on the ground of improper venue.
- 12 (c) ~~Judicial Review for State Board of Elections and Ethics Enforcement.~~ Elections. –
 13 For a stay entered pursuant to G.S. 150B-33(b)(6), the State Board of Elections and Ethics
 14 Enforcement may obtain judicial review of the temporary restraining order or preliminary
 15 injunction in the superior court of the county designated in subsection (a) of this section."

17 PART IV. GUARDIANSHIP

18 SECTION 6. G.S. 35A-1107 reads as rewritten:

19 "**§ 35A-1107. Right to counsel or guardian ad litem.**

20 (a) The respondent is entitled to be represented by counsel of ~~his~~ the respondent's own
 21 choice or by an appointed guardian ad litem. Upon filing of the petition, an attorney shall be
 22 appointed as guardian ad litem to represent the respondent unless the respondent retains his own
 23 counsel, in which event the guardian ad litem may be discharged. Appointment and discharge of
 24 an appointed guardian ad litem shall be in accordance with rules adopted by the Office of Indigent
 25 Defense Services.

26 (b) An attorney appointed as a guardian ad litem under this section shall represent the
 27 respondent until ~~the~~ any of the following occurs:

28 (1) The petition is dismissed or until a dismissed.

29 (2) A guardian is appointed under Subchapter II of this Chapter.

30 (3) Other relief is granted under Article 2 of this Subchapter.

31 (c) After being appointed, the guardian ad litem shall personally visit the respondent as
 32 soon as possible and shall make every reasonable effort to determine the respondent's wishes
 33 regarding the incompetency proceeding and any proposed guardianship. The guardian ad litem
 34 shall present to the clerk the respondent's express wishes at all relevant stages of the proceedings.
 35 The guardian ad litem also may make recommendations to the clerk concerning the respondent's
 36 best interests if those interests differ from the respondent's express wishes. In appropriate cases,
 37 the guardian ad litem shall consider the possibility of a limited guardianship and shall make
 38 recommendations to the clerk concerning the rights, powers, and privileges that the respondent
 39 should retain under a limited guardianship."

41 PART V. LANDMARK DESIGNATION

42 SECTION 7. G.S. 160D-946 reads as rewritten:

43 "**§ 160D-946. Required landmark designation procedures.**

44 As a guide for the identification and evaluation of landmarks, the preservation commission
 45 shall undertake, at the earliest possible time and consistent with the resources available to it, an
 46 inventory of properties of historical, architectural, prehistorical, and cultural significance within
 47 its jurisdiction. ~~Such~~ The inventories and any additions or revisions thereof to them shall be
 48 submitted as expeditiously as possible to the Office of Archives and History. No regulation or
 49 amendment to a regulation designating a historic building, structure, site, area, or object as a
 50 landmark nor any amendment thereto may shall be adopted, nor may any and no property shall

1 be accepted or acquired by a preservation commission or the governing board, until all of the
2 following procedural steps have been taken:

- 3 (1) The preservation commission ~~shall (i) prepare and adopt~~ (i) prepares and
4 adopts rules of procedure and (ii) prepare and adopt ~~prepares and adopts~~
5 principles and guidelines, standards, not inconsistent with this Part, for
6 altering, restoring, moving, or demolishing properties designated as
7 landmarks.
- 8 (2) The preservation commission ~~shall make or cause to be made forwards to the~~
9 Office of Archives and History of the North Carolina Department of Natural
10 and Cultural Resources an investigation and report on the historic,
11 architectural, prehistorical, educational, or cultural significance of each
12 building, structure, site, area, or object proposed for designation or
13 acquisition. ~~Such investigation or report shall be forwarded to the Office of~~
14 Archives and History, North Carolina Department of Cultural Resources.
- 15 (3) The Department of Natural and Cultural Resources, acting through the State
16 ~~Historic Preservation Officer,~~ shall, upon request of the department or at the
17 ~~initiative of the preservation commission,~~ be given an opportunity to review
18 ~~and comment upon the substance and effect of the designation of any~~
19 ~~landmark pursuant to this Part. Any comments shall be provided in writing. If~~
20 ~~the Department does not submit its comments or recommendation in~~
21 ~~connection with any designation within 30 days following receipt by the~~
22 ~~Department of the investigation and report of the preservation commission,~~
23 ~~the commission and any governing board shall be relieved of any~~
24 ~~responsibility to consider such comments.~~ Resources is allowed 30 days from
25 receipt of the preservation commission's complete investigation and report to
26 provide written comments to the commission concerning the proposed
27 designation or acquisition. Failure of the Department to submit its comments
28 within the time allowed relieves the commission and the governing board of
29 any responsibility to consider the comments.
- 30 (4) The preservation commission and the governing board ~~shall~~ hold a joint
31 legislative hearing or separate legislative hearings on the proposed regulation.
32 Notice of the hearing shall be made as provided by G.S. 160D-601.
- 33 ~~(5) Following~~ Following the hearings, the governing board may adopt the
34 regulation as proposed, adopt the regulation with any amendments it deems
35 necessary, or reject the proposed regulation.
- 36 (6) Upon adoption of the regulation, the owners and occupants of each designated
37 landmark ~~shall be~~ are given written notice of ~~such~~ the designation within a
38 reasonable time. One copy of the regulation and all amendments ~~thereto to it~~
39 shall be filed by the preservation commission in the office of the register of
40 deeds of the county in which the landmark ~~or landmarks are~~ is located. In the
41 case of any landmark property lying within the planning and development
42 regulation jurisdiction of a city, a second copy of the regulation and all
43 amendments ~~thereto to it~~ shall be kept on file in the office of the city or town
44 clerk and be made available for public inspection at any reasonable time. A
45 third copy of the regulation and any amendments shall be given to the local
46 government building inspector. The fact that a building, structure, site, area,
47 or object has been designated a landmark shall be clearly indicated on all tax
48 maps maintained by the local government for such period as the designation
49 remains in effect.
- 50 (7) Upon the adoption of the landmark regulation or any amendment ~~thereto, it~~
51 ~~shall be the duty of~~ to it, the preservation commission ~~to give~~ gives notice

1 ~~thereof~~ of the regulation or amendment to the tax supervisor of the county in
2 which the property is located. The designation and any recorded restrictions
3 upon the property limiting its use for preservation purposes shall be
4 considered by the tax supervisor in appraising it for tax purposes."
5

6 **PART VI. EFFECTIVE DATE**

7 **SECTION 8.** This act is effective when it becomes law.